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IN a recent case in a county court in Iowa, the question was raised between landlord and tenant as to the acquisition of rights of property in a meteorite. The tenant for years saw the meteorite fall, and immediately dug it up and sold it. It had already been decided by one of the lower courts of Iowa, in 1875, that a meteorite which fell on a highway belonged to the owner of the fee and not to the finder;[1] and in the case above mentioned the landlord prevailed. The tenant's vendee, however, was not satisfied with the decision, and we may hope soon to obtain the opinion of a court of last resort.

There was a case in England,[2] in 1839, where large stones had fallen upon copyhold land from an adjoining cliff. The copyholder removed and sold some of these stones, and the lord brought trover and obtained judgment on the ground that the stones had fallen before the copyholder came into possession, and were part of the soil granted to him. Parke, B., however, prefaced his opinion by saying: "If it had been shown that these stones had come from the adjoining hills by some convulsion of nature, or by the act of God, while the defendant was the copyholder, his argument would be well founded; then they would belong either to the party from whose lands they had been severed, or to the copyholder, as having fallen by accident upon his soil; and the lord would have no more right to them than in the case of an ordinary occupier of land under a landlord. But that question does not arise here. These stones have been in the same state as far back as living memory goes, and are to be considered a portion of the soil," etc.

It seems impossible to support this distinction. For if, as is assumed by Parke, B., in the case actually before him, the stones were a part of the soil when the tenant came into possession, must they not have been a part of the soil from the moment they fell and became embedded in it? From that moment they were physically annexed to the soil, and what more is necessary to make them a part of it? There cannot, as in the case of a fixture erected by the tenant, be any

[1] 15 Alb. L. J. 216.

[2] *Dearden* v. *Evans*, 5 M. & W. 11.

question as to the intention with which the annexation was made; for it was not made by human agency. If then by falling upon and becoming embedded in the land when there was no tenant there, they became a part of the soil, it is clear that the mere existence of a lease at the time of the fall can make no difference. For the physical annexation is the same whether there is a lease or not.

The question then is, has the tenant any right to sever; and it is submitted that he has not. Even when a fixture is erected by the tenant himself the general rule is that it becomes the absolute property of the landlord. To this rule there are, no doubt, many exceptions by which the tenant is given a right to sever; but in a case where he had no previous ownership in the thing annexed, it seems impossible to devise any reason whatever for departing from the general rule. A closer analogy, however, is found in the case of accretion,—an addition of land to land. For, though a meteorite is a mineral differing in crystalline structure from any mineral native to this earth, it is, in outward characteristics, like any other stone, and stones are in large measure the stuff that land is made of. A meteorite is, of course, a sudden addition to land, and true it is that sudden accretion to A.'s land from the sea, or by the sudden movement of a river, does not become the property of A., — but no more does it become the property of A.'s tenant. The only reason, moreover, that it does not become A.'s property is that it had a former owner (either the king or a private individual), and can be identified. As to the question between landlord and tenant, therefore, the case of the meteorite and the case of gradual accretion (the kind of accretion which is deemed to have had no former owner, or rather to be lost to its former owner) seem to be exactly the same. And we do not know that it has ever been contended that a tenant for years may cut off the land which, in the course of the tenancy, has been added by gradual accretion from the sea or by the slow movement of a river from its bed, and return to the landlord the exact number of square feet which he received from him.

To return to Baron Parke's decision and dictum, we have found that, on the supposition that the stones became a part of the land, it is impossible to support the dictum; and on the facts of the case it is impossible to support any other supposition. For the only other supposition is that stones embedded in land are chattels unconnected with the land, the objection to which is that it is not true. It would be extraordinary, for instance, to hold that the executor, and not the heir, of the owner of the fee would take such stones.

We feel that we have been rash in venturing to question even a dictum of Baron Parke's, and are glad to be able to refer to a case in the Kings' Bench,[1] in 1835, containing at least dicta in support of the view we have expressed. The case was trespass for carrying away sand which had been blown from the sea-shore and formed mounds upon the land. The defendants justified by a custom, and since there cannot be a custom to take a profit *in alieno solo*, the question was whether it was a taking of a part of the ground, and the court held that it was. It may be possible to support the case merely upon the ground that the sand which had drifted in could not be distinguished from that originally there. Littledale, J., said, however: "Of what is soil in general composed?

[1] *Blewett* v. *Tregonning*, 3 A. & E. 554, 574-5.

Many things enter into it which are brought artificially or by accident, and the moment they are so brought they become part of the soil." And Patterson, J.: "I am, however, of opinion that when anything in the nature of soil is blown or lodged upon a man's close, it is part of the close, and he has a right to it against all the world."[1]

THE case of *Leisy* v. *Hardin* last spring was regarded by some persons as indicating an alliance between the Supreme Court of the United States and the liquor interest, — a view which involved a failure to observe that the doctrine, beside having no peculiar application to the liquor traffic, was as old as Chief Justice Marshall's opinion in *Brown* v. *Maryland*, 12 Wheat. 419 (1827). A similar inattention to the real scope and meaning of a decision has caused the recent case of *Crowley* v. *Christensen*, 11 Sup. Ct. Rep. 13, to be proclaimed by the press as a vindication of prohibition, and hence, it would seem, as evidence of a change of heart on the part of the Supreme Court. How far such a view is from a true understanding of the case may be easily seen. In *Yick Wo* v. *Hopkins*, 118 U. S. 356, a San Francisco ordinance forbade any one to carry on a laundry without the consent of a board of supervisors. No express limitation was put on their power in the matter; and the court found in all the circumstances of the case, including the way in which the law was administered, an intention to give the board an arbitrary right to withhold its consent at will and by this means to discriminate against the Chinese. For these reasons the ordinance was held to deprive the petitioner of the equal protection of the laws within the meaning of the Fourteenth Amendment.[2] In *Crowley* v. *Christensen* an ordinance required every liquor dealer to take out a license, and for that purpose to obtain the consent of the police commissioners. Sawyer, J., held in the Circuit Court[3] that the facts were not distinguishable in principle from *Yick Wo* v. *Hopkins*, and that the ordinance was therefore unconstitutional. As the case, however, was apparently free from any of the special circumstances which, together with the mode of administering the ordinance, indicated a grant of arbitrary power in *Yick Wo* v. *Hopkins*, the decision of Sawyer, J., obviously goes further than that case, and seems to lay down the proposition that the absence of express limitation is necessarily equivalent to a grant of unrestricted power. This is, however, a proposition for which *Yick Wo* v. *Hopkins* does not stand; and all that was necessary for the Supreme Court to decide in reversing the decision below was that the ordinance granted no such power in giving licenses, but only the right to give them on general grounds of fitness and convenience. Such a ground of decision would cover any other business as well as the liquor traffic, and would certainly not have any great significance in the prohibition controversy. And the opinion of Mr. Justice Field in *Crowley* v. *Christensen* does not appear to decide more than this. It contains, to be sure, extended observations on the mischief arising from the sale of liquor, but it nowhere countenances the view that a grant of arbitrary power to give

1 There is a French case referred to in 20 Alb. L. J. 299. in which it was decided that a meteorite "cannot be an accession to the land upon which it alights. It belongs entirely by occupation to him who has found it." And Marcadé, after citing this case, added, "One can hardly conceive how an advocate could be found to entertain a contrary opinion"

2 The court went on the further ground that even if the ordinance was constitutional on its face, its actual operation under State authority amounted to a practical denial by the State itself of the equal protection of the laws, and so entitled the petitioner to relief.

3 *In re Christensen*, 43 Fed. Rep. 243.

licenses would be constitutional; and it expressly recognizes the right of the legislature to regulate any lawful trade. On principle it would seem that the case would have been governed by the same considerations if the ordinance had dealt with the licensing of restaurant keepers or apothecaries.

To refrain from drinking liquor, smoking, and playing cards or billiards is very likely not a detriment from a moral standpoint; and the Supreme Court of New York points out in *Hamer* v. *Sidway* (11 N. Y. Supp. 182) that it cannot be disadvantageous in a pecuniary sense to abstain from habits which are "not only expensive, but unnecessary and evil in their tendency." But to say that no legal detriment is involved in such a course, *i.e.*, that no legal right is parted with, would probably surprise a good many persons who are in a situation similar to the plaintiff's in that case. The defendant's testator said to his nephew, fifteen years old, that if he would refrain from the habits above-mentioned till he was twenty-one, he would give him $5,000; the nephew did so, and suit is brought on the promise. Whether the parties to the transaction regarded it as an offer for a unilateral contract, or merely as a promised gift (the latter was the view of the court), is a question of fact on which the result reached may have been correct enough, though the argument drawn from the use of the word "give" in the uncle's promise — that it presumably meant a gratuitous transfer, unless evidence could be brought forward to show the contrary — seems to overlook a common use of language. The conduct of the nephew, moreover, indicates that he thought he had something more than a mere moral claim. But the court's further suggestion, that even if there were an intention to contract the acts of the nephew, though performed at the uncle's request and in exchange for his promise, would not be a sufficient consideration, is surprising. The proposition that the promisee must incur a detriment *in a pecuniary sense* can hardly be sound, in any such application of it, at least, as the court would here make. These points were not, however, conclusive of the decision in *Hamer* v. *Sidway*, as there were further difficulties in the way of plaintiff's recovery.

A CASE presenting a very curious situation of affairs has recently been decided in the courts of Massachusetts, and is now on its way to final settlement in the Supreme Court of the United States. The facts are briefly as follows: The county of Nantucket comprises and is coterminous with the town of the same name. In 1888 the selectmen of the town discovered that the town treasurer, one Brown, had been fraudulently obtaining money from the town for a number of years by means of forged vouchers. A town-meeting was immediately called, which was very largely attended by the voters of the town, and at which it was unanimously decided to take steps towards having Brown prosecuted. Accordingly, at the next session of the Superior Court for the county of Nantucket, a grand jury, drafted by the selectmen at a town-meeting called for that purpose, brought in an indictment against Brown for forgery. The trial jury was also drafted by the selectmen in like manner. Before pleading to the indictment, the defendant asked the judge to rule that the grand jury, by reason of bias and interest, was not competent to make the presentment for the crime. And

the trial jury was objected to for the same reason. The Court refused so to rule, and the defendant excepted. The Supreme Court (*Com.* v. *Brown*, 147 Mass. 585) upheld the ruling of the trial judge, on the ground that the interest of the jurors in both cases was not sufficient to incapacitate them, and that the interest of the selectmen was not sufficient to render the draft illegal. In the course of the opinion the court remarked that the defendant could not have been indicted in any other county than Nantucket.

The exceptions being overruled, the defendant pleaded to the indictment, and a verdict was found against him. After the trial had begun the defendant's counsel learned for the first time that some, if not all of the members of both juries had been present at the meeting at which it was voted to prosecute Brown, and had voted for the prosecution. He immediately filed a plea of exception to the jurisdiction, on the ground that the members of both juries were incompetent, because of their participation in the town-meeting; that under the circumstances of the case it would be impossible to get an impartial jury in the county of Nantucket; and that the present trial, and any trial by the court in that county, would be in violation of the Constitution of Massachusetts, and of the Fourteenth Amendment of the Constitution of the United States. The court overruled the plea and the defendant excepted. The Supreme Court (*Com.* v. *Brown*, 150 Mass. 334) overruled the exception. The court held that the plea amounted to a motion in arrest of judgment, and that the objection to the jurisdiction on the above grounds, not appearing on the record, could not be brought before them.

The conviction was therefore affirmed, the defendant was sentenced and imprisoned. Two weeks later his counsel obtained a writ of review from a court of the United States, and the defendant was released on bail. The case is now docketed in the United States Supreme Court, where, unless advanced, it will not come up for three years. It is not altogether unlikely that that court may decide in favor of the defendant Brown, and in that event, as it is admitted that he cannot be tried in any other county, the Legislature of Massachusetts will have the question forcibly presented whether some change in the judicial system of the county of Nantucket is not desirable.

In a case at the Drogheda Sessions, mentioned by the March "Jurist," the defendant, being sued for rent, "pleaded the house was haunted, and his wife had been greatly frightened by a ghost appearing at their bed and throwing something upon her at night; they had to leave the house, and witness would prove it was haunted." The court ruled, correctly as it would seem, that these facts did not constitute a defence; but if the lease were of a furnished house, the question might perhaps be more doubtful. According to the doctrine of *Smith* v. *Marrable* (11 M. & W. 5) there is an implied covenant in such a case that the house is reasonably fit for habitation, and the fact that the house is infested with bed-bugs is a breach of this covenant. If the presence of the ghost should be thought equally objectionable, he might thus become a material issue; but it may be doubted whether the court would think there was substance enough in a ghost for judicial investigation.